

The Honorable J. Kelley Arnold

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DIANN LAUREL HIEBERT, CLYDE MARK)	
MATTHEWS JR., individually and on behalf of)	
all persons similarly situated,)	No. C06-5489 JKA
)	
Plaintiffs,)	PROTECTIVE ORDER
)	
v.)	
)	
WAL-MART STORES INCORPORATED, a)	
Delaware Corporation Licensed to do Business)	
in Washington State,)	
)	
Defendant.)	

The Court finds that good cause exists for issuance of this Protective Order (“Order”) to establish a procedure for use and/or disclosure of Confidential Information and to govern the inadvertent production of Privileged Information, as those terms are defined herein, and that entry of this Order is appropriate.

THEREFORE, IT IS HEREBY ORDERED:

Certain materials, information, Documents (as defined in paragraph 1 below) or testimony (“Discovery Materials”) produced or given by the parties in the course of pre-trial discovery or used or produced at trial in this action will involve disclosure of

1 confidential, proprietary, financial, technical, scientific, personnel, and business
2 information (“Confidential Information). Moreover, despite the reasonable precautions
3 taken by the parties, Confidential Information and/or documents protected by the attorney-
4 client privilege, attorney work product or any other privilege (“Privileged Information”) may be inadvertently disclosed. Accordingly, the parties agree that the following
5 provisions shall govern disclosure and use of all such Discovery Materials containing
6 Confidential Information and the return of inadvertently disclosed Privileged Information.
7

8 1. As used herein, “Documents” shall include data (including electronic data)
9 and any other material (and their contents) produced through discovery by the parties, as
10 well as any portion of a transcript of a deposition or other proceeding, exhibit, affidavit,
11 declaration, answers to interrogatories, or responses to request for admissions.

12 2. Confidential Information may be found in, but not limited to, all or any of
13 the following specifically designated “Confidential” Documents and the content thereof:

14 (a) Documents, depositions or testimony, responses to written discovery, and any other
15 information or material produced or otherwise made available to the parties in this action;
16 (b) copies, extracts, reports, studies, notes, complete or partial summaries and other
17 Documents or materials made or prepared from Confidential Information; and
18 (c) transcripts, exhibits and other pleadings or writings that summarize or otherwise
19 disclose Confidential Information.

20 3. This Order covers Documents and/or information or material designated by
21 the disclosing party or non-party (hereinafter, the “Source”) as containing or consisting of
22 Confidential Information. Any Source may, in good faith, designate any such materials or
23 portions thereof as being subject to the provisions of this Order by means of a stamp or

1 other designation on the Document of the word "Confidential." Such designation shall be
2 limited to information or materials that the Source in good faith believes to constitute a
3 trade secret, proprietary business information, private personnel information and/or data,
4 and/or any information that implicates or may implicate the privacy rights of the Source
5 and/or a third party, and that is not otherwise publicly available, except that the foregoing
6 shall not apply to any Document that is in the public domain as a result of a violation of
7 any duty, law or agreement.

8 4. In designating materials, Documents or portions thereof as "Confidential,"
9 the Source shall mark every page and/or significant component, which contains
10 Confidential Information with the appropriate "Confidential" stamp. Notwithstanding the
11 foregoing sentence, a cover letter may be used to designate certain materials, such as
12 computer data, where stamping would be impractical or impossible. Transcripts of
13 deposition or other testimony shall be designated by reference to the page and lines being
14 designated. Designation shall be made at the time such materials are produced or given,
15 except that: (a) in the case of testimony upon deposition or hearing, such designations
16 shall be made within twenty (20) business days after the transcript of such deposition or
17 hearing is available; and (b) a reasonable extension of any applicable time period
18 hereunder may be agreed to in writing among counsel for the respective parties.
19 Designations may be withdrawn by the Source at any time.

20 5. Unless otherwise ordered by the Court, any Document or material
21 designated by any source as containing Confidential Information shall be safeguarded and
22 shall not be disclosed by non-designating counsel, except, subject to the provision of this
23 Order, to:

1 a. the named Plaintiff,

2 b. Defendant Wal-Mart Stores, Inc. including but not limited to their
3 counsel, including paralegals, clerical or other support staff or services and any officers,
4 directors, managers, supervisors or other employees with responsibilities related to the
5 subject matter of this litigation;

6 c. counsel of record for the party to whom such Documents or
7 materials are produced or given, including co-counsel of record and the legal associates,
8 paralegals, clerical or other support staff or services of such counsel or co-counsel assigned
9 to assist such counsel in the preparation of this litigation;

10 d. the Court, including any Court personnel, stenographers or other
11 persons involved in taking or transcribing court or deposition testimony in this action, and
12 members of the jury, provided that any Confidential Information submitted or filed with
13 the Court shall be placed under seal subject to release or inspection only by order of the
14 Court or consent of the party claiming confidentiality as to the particular material, except
15 that when possible, only confidential portions of filings with the Court shall be filed under
16 seal;

17 e. any court reporter (including audio and video) involved in this
18 action;

19 f. independent experts or consultants who have been consulted or
20 retained by counsel in this action to furnish technical or expert services or to give technical
21 or expert testimony in the trial of this action, provided that such expert or consultant signs
22 the Undertaking attached hereto as Exhibit A, acknowledging that he or she has read a
23 copy of this Order and agrees to be bound by its terms;

1 g. copying imaging, computer services and/or litigation support
2 services provided that all Confidential Information and/or Documents, including copies
3 thereof whether in hard copy or electronic form, are retrieved by the furnishing party upon
4 completion of any such copying, imaging and computer services;

5 h. special masters;

6 i. the direct staff of persons designated in paragraphs 6(e), (f), (g) and
7 (h), subject to any conditions enumerated therein;

8 j. any deposition witness, including putative class members, in
9 accordance with paragraph 8;

10 k. any other Person upon written consent from counsel for the party
11 which produced or gave such Document(s), provided that such person signs the
12 Undertaking in the form attached hereto as Exhibit A, acknowledging that he or she has
13 ready a copy of this Order and agrees to be bound by its terms.

14 6. Nothing in this Order shall prevent any party from producing any Document
15 or information in his, her or its possession in response to a lawful subpoena or other
16 compulsory process, provided that written notice shall be given to all other parties at least
17 ten (10) business days prior to the return date of the subpoena or other compulsory process
18 seeking discovery of the designated materials.

19 7. Subject to the terms of this Order any party may utilize Confidential
20 Information in the course of a deposition provided that, prior to his or her examination, the
21 witness is furnished a copy of this Order and has executed the Undertaking attached hereto
22 as Exhibit A. If a non-party refuses to the Undertaking, disclosure of such information to
23 the witness during the deposition shall not be a waiver of confidentiality and shall not

1 prevent examination of the witness on Documents or other information containing
2 Confidential Information. Such witness shall not be allowed to retain copies of either the
3 Confidential Information or any portions of their deposition transcript containing
4 Confidential Information. If disclosure of Confidential Information is opposed, nothing in
5 this Paragraph 7 shall preclude a party from continuing the deposition until the matter can
6 be raised before and ruled upon by the Court.

7 8. The parties agree to take reasonable precautions to prevent disclosure of
8 Confidential Information without the "Confidential" designation provided for in this Order.
9 However, it is possible that inadvertent or mistaken disclosures will still be made, despite
10 all reasonable precautions. If Documents containing Confidential Information are
11 inadvertently or mistakenly disclosed, the parties agree that the Source may request the
12 return of such Documents or materials within fifteen (15) business days after the discovery
13 of their inadvertent or mistaken disclosure to allow the designation of the Documents or
14 materials as Confidential Information consistent with the provisions of this Order. If the
15 receiving party fails to return such Documents or materials, the Source may move the
16 Court for an Order compelling their return.

17 9. If Confidential Information is made an exhibit to or the subject of
18 examination during a deposition or hearing, or is incorporated into a pleading or other
19 writing filed with the Court, arrangements shall be made (a) to bind separately said
20 exhibits, as well as confidential portions of the transcript or pleading and (b) to place them
21 in a sealed envelope appropriately marked.

22 10. Nothing in this Order shall prevent:
23

1 a. either party from using Documents designated as “Confidential,” or
2 from referring to or reciting any information contained in such materials, in connection
3 with any hearing, motion, brief, or other proceeding in this action, provided the relevant
4 portions of the pleading or other paper in which the Confidential Information is embodied
5 shall be filed and maintained under seal by the Clerk of the Court until further order of the
6 Court, and shall not be available for public inspection. The party making the filing shall be
7 responsible for filing the pleading or other paper in a sealed envelope, with the words
8 “Confidential” stamped on the envelope and the following statement shall be printed on the
9 envelope: “This envelope contains Confidential Information which is subject to a
10 Protective Order and may not be examined or copied except in compliance with that
11 Order;”

12 b. the use in open court, at any hearing or at trial of this case, of any
13 material that is subject to this Order or filed under seal pursuant to the provisions herein.
14 Any court hearing which refers to or describes Confidential Information shall, in the
15 Court’s discretion, be held in camera. Any party desiring that hearings or any portion
16 thereof be held in camera, or that the trial or any portion thereof be conducted in camera,
17 may make a separate motion therefor.

18 11. Nothing herein shall prevent a receiving party from challenging any
19 designation of a Document as “Confidential.” The receiving party may file written notice
20 to the Source requesting withdrawal of the designation. The Source who designated the
21 material shall have fifteen (15) business days from the date on which the request was made
22 to respond. If the Source refuses to withdraw the designation or fails to respond to the
23 request within that time, the receiving party may apply to the Court for an order declaring

1 that the Document is not appropriately designated. The burden of proof on any such
2 application shall be consistent with the protection of Confidential Information under the
3 applicable federal or state law. Notwithstanding a challenge or application to the Court
4 pursuant to this Paragraph 11, all Documents designated as “Confidential” shall be subject
5 to this Order until the Source withdraws the designation or until the Court determines that
6 the Document is not appropriately designated as “Confidential.”

7 12. Within ninety (90) days after the final determination of this action (i.e., after
8 all appellate rights have been exhausted), all Documents designated as containing
9 Confidential Information and all copies thereof shall, upon request, be returned to counsel
10 for the Source who initially produced such Documents (unless previously permanently
11 discarded, in which case, counsel for the receiving party shall certify in writing to counsel
12 for the Source that such Documents have been permanently discarded), provided that
13 copies may be kept by counsel of any pleading, brief or Document submitted to the Court,
14 deposition and/or trial transcripts and exhibits thereto and correspondence subject to this
15 Order.

16 13. The parties further agree to take reasonable precautions to prevent the
17 inadvertent or mistaken disclosure of Documents containing Privileged Information. The
18 parties further agree that “reasonable precautions” shall include, by way of example and
19 not limitation, a multi-level review of documents for production, including searching for
20 and gathering documents from offices, businesses and other locations where responsive
21 information might be located and having lawyers or paralegals carefully review the
22 documents for Privileged Information, redacting those portions of Documents where only a
23 portion is protected and preparing detailed privilege logs reflecting any withheld material.

1 Despite all reasonable precautions, the parties recognize that inadvertent or
2 mistaken disclosures of Privileged Information may still be made. If Documents
3 containing Privileged Information are inadvertently or mistakenly disclosed, the parties
4 agree that the following procedure shall govern:

5 a. The Source shall promptly advise the receiving party of the
6 disclosure and shall recall any such inadvertently disclosed Documents by making a
7 request of the receiving party for their return.

8 b. If a receiving party becomes aware that a Source inadvertently or
9 mistakenly disclosed Documents containing Privileged Information, the receiving party
10 shall promptly advise the Source of the disclosure and return the Documents and any and
11 all copies to the Source.

12 For purposes of this Paragraph 13, the Parties agree that all requests for, and the
13 return of, inadvertently or mistakenly disclosed Documents shall be reasonably prompt if
14 issued within fifteen (15) business days after the Source or receiving party learns of the
15 inadvertent or mistaken disclosure. If the receiving party fails to return such Documents or
16 materials, the Source may move the Court for an Order compelling their return.

17 Notwithstanding a motion to the Court, all Documents containing Privileged Information
18 that are inadvertently or mistakenly disclosed shall be subject to this Order until the Source
19 withdraws its request for their return or until the Court determines that the Document is not
20 appropriately claimed as Privileged Information.

21 14. This Order may be amended by written agreement between counsel for the
22 parties, subject to approval of the Court, or may be modified by motion to the Court.
23

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DIANN LAUREL HIEBERT, CLYDE MARK)	
MATTHEWS JR., individually and on behalf of)	
all persons similarly situated,)	No. C06-5489 JKA
)
Plaintiffs,)	
)
v.)	
)
WAL-MART STORES INCORPORATED, a)	
Delaware Corporation Licensed to do Business)	
in Washington State,)	
)
Defendant.)	

UNDERTAKING OF _____

I, _____, declare as follows:

1. My address is _____.
2. My present employer and the address of my present employer (if different from above) are _____.
3. I have received a copy of the Protective Order in the above-captioned action.
4. Having carefully read and understood the provisions of the Protective Order, I agree to be bound by its terms.
5. I will hold in confidence and not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action, any Documents designated

1 as "Confidential," as set forth in the Protective Order, which are disclosed to me. I will
2 maintain any such information in a safe and secure place.

3 6. I will return all Documents designated as "Confidential" which come into
4 my possession and Documents or things I have prepared relating thereto, to counsel of the
5 party that provided such materials to me. I acknowledge that such return shall not relieve
6 me from any continuing obligation imposed on me by the Protective Order.

7 7. I agree to submit to the jurisdiction of a court located in the state of
8 _____, for purposes of enforcement of this Undertaking.

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Dated this ____ day of _____, 20__.

11 _____
Signature

12 _____
Print Name

13 _____
Witness